



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

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13-29

No Criminal Charge Approved in the Death of Paul Boyd

Victoria – The Criminal Justice Branch of the Ministry of Justice announced today that independent Special Prosecutor Mark R. Jetté has concluded that no criminal charge will be approved against Constable Lee Chipperfield of the Vancouver Police Department in connection with the shooting death of Paul Boyd on August 13, 2007. A Clear Statement explaining the decision of the Special Prosecutor in greater detail is attached to this release.

Mr. Jetté, a senior Vancouver lawyer, was appointed by Assistant Deputy Attorney General Joyce DeWitt-Van Oosten on June 24, 2013 to review a Report to Crown Counsel prepared by the Alberta Serious Incident Response Team (ASIRT). In May 2012 ASIRT had been asked by the Ministry of Justice to conduct a renewed investigation into the death of Mr. Boyd, after a previously undisclosed video recording showing a portion of the confrontation between Mr. Boyd and the Vancouver Police was released by the witness who had filmed it.

As the Criminal Justice Branch had previously reviewed a Report to Crown Counsel prepared by the Vancouver Police Department following their investigation of the incident, and concluded that Cst. Chipperfield should not be charged, Ms DeWitt-Van Oosten concluded that the appointment of an independent Special Prosecutor was necessary in order to avoid any potential for real or perceived improper influence in the administration of criminal justice.

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Clear Statement

Overview

Following a comprehensive review of a Report to Crown Counsel (RCC) that was prepared by the Alberta Serious Investigations Unit (ASIRT), independent Special Prosecutor Mark R. Jetté has concluded that no criminal charge will be approved against Cst. Lee Chipperfield of the Vancouver Police Department in connection with the fatal shooting of Paul Boyd on August 13, 2007.

After considering all of the available evidence as presented by the investigators, including new video evidence that surfaced in May 2012, the Special Prosecutor has concluded that there is no substantial likelihood of conviction on a criminal charge. In other words, it is his assessment that the evidence is not sufficient to prove beyond a reasonable doubt that the shooting of Mr. Boyd constitutes a culpable homicide within the meaning of the *Criminal Code of Canada*.

In reaching this conclusion, the Special Prosecutor applied the Charge Assessment Guidelines as established by Criminal Justice Branch (CJB) policy. These Guidelines apply to all criminal charge assessments in British Columbia, whether conducted by CJB or a Special Prosecutor. The Guidelines mandate that the reviewing prosecutor fairly, independently and objectively examine the available evidence to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether a prosecution is required in the public interest.

Under the Guidelines, a substantial likelihood of conviction exists where a prosecutor is satisfied that there is a strong, solid case of substance to present to a court. In deciding whether this standard has been met in a particular case, the prosecutor must consider:

1. what material evidence is likely to be admissible;
2. the weight likely to be given to the admissible evidence; and
3. the likelihood that viable, not speculative, defences will succeed.

Under Canadian criminal law, the prosecution bears the onus of proving an alleged criminal offence beyond a reasonable doubt. The person accused of committing a crime is presumed innocent until proven guilty by the Crown. A reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence, or the credibility or reliability of one or more of the witnesses.

If a defence realistically arises on the evidence that is available to the prosecution, such as self-defence, the Crown bears the onus of proving beyond a reasonable doubt that the defence does not apply. The accused does not have to show that the defence has been made out. Nor is the accused obliged to call evidence in support of it. Evidence in support of self defence may come from an accused person or other evidence called by the accused person, and it may arise in the case for the Crown itself.

Prior Charge Assessments and What Led to the ASIRT Investigation

Thirty-nine year old Paul Boyd was shot by Cst. Chipperfield on August 13, 2007, after police responded to a 911 complaint of an assault in progress. The shooting was initially investigated by the Vancouver Police Department (VPD) Homicide Unit. According to ASIRT, the VPD investigation identified 114 civilian witnesses who either saw a portion of the shooting, or witnessed events leading up to the shooting. Four VPD police officers, including Cst. Chipperfield, were identified as having initial contact with Mr. Boyd immediately prior to the shooting. Several other VPD officers were identified as having responded to the 911 call and witnessing a portion of the shooting incident.

At the conclusion of its investigation, the VPD asked the Office of Investigative Standards and Practices for the Royal Canadian Mounted Police (RCMP) to review the investigation for thoroughness and impartiality. Once the RCMP review was complete, VPD submitted a Report to Crown Counsel to the CJB for charge assessment.

Based on the material gathered by VPD, the CJB concluded that there was no substantial likelihood of conviction for a criminal charge. On November 9, 2009, the CJB released a Media Statement announcing its decision. A Clear Statement explaining the decision was attached to the Media Statement.

A coroner's inquest into Mr. Boyd's death was subsequently held in December 2010. Approximately 25 witnesses testified. In June 2011 the CJB publicly confirmed that evidence called at the inquest would not result in any change to the decision that there would not be any criminal charge approved against Cst. Chipperfield. The CJB concluded that the evidence in question did not change the Branch's original determination that there was no substantial likelihood of conviction for a criminal charge.

On May 29, 2012, new video evidence surfaced showing a portion of the incident involving police and Mr. Boyd. According to ASIRT, the video is 49 seconds in length and captures the final three of nine total shots fired by Cst. Chipperfield during the incident involving Mr. Boyd. This evidence was not previously known to VPD, the RCMP or the Criminal Justice Branch. It came from a civilian witness's cell phone and was made public through the media almost five years after Mr. Boyd's death. The witness did not previously identify himself or the existence of the video to police investigators.

Following disclosure of the video evidence, the Ministry of Justice asked ASIRT to conduct a renewed investigation into the police shooting.

On June 24, 2013, ASIRT informed the CJB that it would be submitting a Report to Crown Counsel for charge assessment. Assistant Deputy Attorney General M. Joyce DeWitt-Van Oosten, QC appointed Mark Jetté as an independent Special Prosecutor to conduct the assessment and the RCC as produced by ASIRT was provided to the Special Prosecutor. A Special Prosecutor is appointed under the *Crown Counsel Act* and acts independent of government, the Ministry of Justice and the Criminal Justice Branch.

In submitting the RCC for charge assessment, ASIRT Executive Director Clifton Purvis stated that he had reasonable and probable grounds to believe that Cst. Chipperfield committed a homicide. However, he also noted that in reaching this determination, Mr. Purvis did not consider any potential defences that might apply to Cst. Chipperfield in light of the evidence. A Special Prosecutor, when assessing whether there is a substantial likelihood of conviction for criminal charges, must consider viable defences.

The Special Prosecutor's Review

Mr. Jetté reviewed the entirety of the evidence gathered by VPD and ASIRT, including the new video evidence that surfaced in May 2012. He also reviewed the transcripts from the coroner's inquest, which detailed the evidence called in that proceeding.

When conducting his charge assessment, Mr. Jetté had reference to the Charge Assessment Guidelines established by CJB; the essential legal elements for offences alleging culpable homicide as set out in the *Criminal Code*; the *Code* provisions relating to use of force by police officers and self-defence; and the relevant criminal case law that informs the application of these provisions.

Summary of the Special Prosecutor's Decision

As noted, the VPD investigation identified 114 civilian witnesses who either saw a portion of the shooting of Paul Boyd, or witnessed events leading up to the shooting. Four VPD police officers, including Cst. Chipperfield, were identified as having initial contact with Mr. Boyd immediately prior to the shooting. Several other VPD officers were identified as having responded to the 911 call and witnessing a portion of the shooting.

In addition to the new video evidence, the ASIRT investigation included a complete review of the evidence gathered by VPD in the course of the original investigation, further interviews with a number of the police and civilian witnesses and additional consultation with use of force experts.

The Special Prosecutor reviewed the whole of this evidence, as well as the transcripts of the evidence called at the coroner's inquest. This Clear Statement will not detail every piece of evidence gathered by police. However, based on the Special Prosecutor's review, the following circumstances were of particular importance to his determination that there is no substantial likelihood of conviction on a charge involving an allegation of culpable homicide. According to the Report to Crown Counsel as provided to the Special Prosecutor:

- On August 13, 2007, members of VPD responded to a 911 complaint in relation to a male who was later identified as Mr. Boyd. The initial complaint to police, although it turned out to be mistaken, was that Mr. Boyd was assaulting another male at a bus stop on Granville Street in Vancouver.
- While Mr. Boyd was not immediately hostile towards police upon their arrival, during the initial contact it was noted that he was holding a hammer. He dropped the hammer when requested to do so, but when police attempted to handcuff him and take him into custody, he leapt to his feet and swung a chain with a lock on it at one of the attending officers, striking the officer in the head and injuring him.
- Cst. Chipperfield and another police officer arrived together in a second police vehicle and witnessed this assault. The officer who was with Cst. Chipperfield tried to subdue Mr. Boyd and became involved in a hand to hand struggle exchanging blows with him. However, Mr. Boyd was larger and stronger and gained the upper hand. The officer struggling with Mr. Boyd resorted to the use of his police baton. However, despite being struck on the arm and leg, Mr. Boyd was not slowed and could not be controlled by police.
- As the confrontation moved onto Granville street and continued, Cst. Chipperfield moved in front of Mr. Boyd with his firearm drawn and pointed it at Mr. Boyd, who was still

armed with the chain. The other officer tried to again hit Mr. Boyd with his baton, and Mr. Boyd swung the chain at the officer, causing him to back away.

- At that point Mr. Boyd turned his attention to Cst. Chipperfield and began advancing toward him. Cst. Chipperfield fired his first shot and within a period of one minute and 20 seconds (80 seconds), he fired a total of 9 shots at Mr. Boyd. Eight of these shots struck him.
- Based on 911 records, the entire incident from its start to the point of the final shot lasted 2 minutes and 38 seconds (158 seconds).
- Police and civilian witnesses described a high level aggression on the part of Mr. Boyd, beginning during his initial encounter and continuing through a running struggle with police. Civilian witnesses and police agree that Mr. Boyd was refusing to comply with police commands to stop and get down. Variations of “stop”, “get down” or “stay down” were reported to have been said by Cst. Chipperfield through to the final shot.
- Numerous witnesses also reported that Mr. Boyd persistently moved toward police in an aggressive manner, even after the first several shots had been fired, and after there was evidence that Mr. Boyd had been hit and to some extent slowed by the shots.
- Cst. Chipperfield reported thinking while the incident was unfolding that Mr. Boyd had not been affected to any great degree by his first several shots. He wondered if he had missed, or if Mr. Boyd was protected by body armour. Some civilian witnesses made similar observations and believed that police were perhaps using rubber bullets.
- The perceptions vary among both police and civilian witnesses as to Mr. Boyd’s position at the time of the final shot, and what he was doing or attempting to do when that shot was fired. He is variously described by civilian witnesses as being on his feet, on his hands and knees, or flat on the ground. Police officers also have varying perceptions as to whether Mr. Boyd was on his hands and knees, upright or moving into an upright position at the time of the final shot.
- Prior to the final shot, Mr. Boyd had dropped the chain and an officer had approached him, pulled the chain away and tossed it out of Mr. Boyd’s reach. This officer also reports yelling “hold your fire” or something to that effect. Several of the police officers who were present did not see this happen and did not hear the officer yell “hold your fire.” A number of civilian witnesses who had a good view of this portion of the incident also failed to observe the officer remove the chain.
- Cst. Chipperfield reported that he did not see this happen. Nor did he hear the officer yell “hold your fire”. He reported that he believed Mr. Boyd was armed with the chain for the entire time of the incident, through to the last shot.
- Cst. Chipperfield described Mr. Boyd as having come to his feet and being practically vertical when the last shot was fired, as well as “almost on his feet” or “upright”.
- An autopsy was conducted on the body of Paul Boyd. The pathologist identified 8 gunshot wounds. Only one of the wounds would have led to a relatively rapid loss of consciousness and then death. According to the evidence, this bullet wound entered the

face and broke Mr. Boyd's jaw, then exited from the body before re-entering the chest cavity, where it passed through the heart. Based on the evidence as a whole, this appears to have been the final shot fired by Cst. Chipperfield. The pathologist offered the opinion that the bullet path was slightly downwards, and that Mr. Boyd would have been leaning forward or kneeling at the time of the final shot. However he was positioned, the upper part of Mr. Boyd's body would have been leaning forward. This could mean that Mr. Boyd was on his hands and knees, or it could mean that he was on his feet and in the process of standing upright at the time the shot was fired.

- The available evidence, including the new video evidence from March 2012, does not clearly disclose what position Mr. Boyd was in, or what he was doing at the time the final shot was fired. In particular, although it does not appear from the medical evidence that Mr. Boyd was fully upright at the time that he was shot in the head, the medical evidence is not necessarily inconsistent with Cst. Chipperfield's recollection of the events and his perception of what was occurring at the time.
- The video evidence captures the last 49 seconds of the shooting incident. The last three shots can be heard on the video. However, it does not show the initial confrontation between Mr. Boyd and police at the bus stop. Nor does it show Mr. Boyd's body position when the last shot was fired. At that point, he had crawled in front of a vehicle which blocked the view of the camera operator. The video does not show that Mr. Boyd was crawling on hands and knees, attempting to stand up or was in fact standing up when the final shot was fired. It is only possible to see part of Mr. Boyd's foot, probably his right foot, at the time the final shot was fired. The rest of his body had passed in front of the parked vehicle and was lost to view. The video does confirm that prior to the last two shots, an officer approached Mr. Boyd, pulled the chain and padlock away and tossed it out of Mr. Boyd's reach.

In light of these circumstances, as well as the other evidence that he reviewed, the Special Prosecutor concluded that a central issue for him to consider in his charge assessment was whether the defence of self-defence might realistically arise on the material presented to him. The available evidence shows that it was Cst. Chipperfield who shot Mr. Boyd. It also shows that the Constable's last shot was fired at Mr. Boyd's head. However, in deciding whether there is a substantial likelihood of conviction for an offence involving culpable homicide, the Special Prosecutor had to consider whether the Crown would be able to disprove self-defence beyond a reasonable doubt. If Cst. Chipperfield was prosecuted for an offence alleging culpable homicide, a reasonable doubt on the issue of self-defence would require an acquittal.

The *Criminal Code*, as interpreted by the courts, authorizes a police officer, if he acts on reasonable grounds, to use as much force as may be reasonably necessary in the exercise of his law enforcement duties. The courts have also recognized that an officer cannot be expected to measure the degree of force that he uses with exactitude, particularly in rapidly unfolding events.

Where death occurs, the defence of self-defence is also available under Canadian criminal law. Self-defence in a case involving death is realistically available to a police officer, as with all persons who may be accused of homicide, when lethal force is applied under a subjectively held belief that it is the only option available to protect the accused or others from death or grievous bodily harm, and the belief is objectively reasonable in the whole of the circumstances. An accused may be found to have acted in self-defence even if he was mistaken in his perception

of the attack upon him, provided that there were reasonable and probable grounds for the mistaken perception.

The evidence made available to the Special Prosecutor in this case was that Cst. Chipperfield personally believed resort to lethal force was necessary to preserve himself and others from death or grievous bodily harm. It was Cst. Chipperfield's belief that Mr. Boyd was armed with the chain and padlock throughout his encounter with police, and that Mr. Boyd was in the process of rising to his feet to continue his attack when the last shot was fired. Cst. Chipperfield had witnessed Mr. Boyd's assault on one of the officers who first arrived at the scene, the efforts of a fellow officer to control Mr. Boyd with less lethal methods, and Mr. Boyd's continued approach despite having been shot a number of times.

The Special Prosecutor saw no evidence that Cst. Chipperfield acted in a vengeful way or out of anger in response to Mr. Boyd's actions. According to expert opinion that was included as part of the Report to Crown Counsel, the position in which Cst. Chipperfield held his firearm was in accordance with police firearms training. The Special Prosecutor saw no evidence of a loss of control on the part of Cst. Chipperfield. The autopsy report and testimony of the pathologist at the coroner's inquest do not contradict Cst. Chipperfield's version of Mr. Boyd's stance at the time of the final shot. The Special Prosecutor concluded that there is nothing in the available evidence that would call into question the credibility of Cst. Chipperfield's assertion that he was acting to preserve himself and others from death or grievous bodily harm. A reasonable doubt on self-defence, based on Cst. Chipperfield's testimony or otherwise, would require an acquittal.

The new video evidence that surfaced in March 2012 confirms that Mr. Boyd was no longer armed with the chain and padlock at the time that Cst. Chipperfield fired the fatal shot. The issue to be addressed by the Special Prosecutor, however, was not whether Cst. Chipperfield was wrong in his belief that Mr. Boyd was armed. Rather, it was whether the officer lacked any reasonable basis for his incorrect belief. As noted, according to the RCC, a number of the civilian witnesses who viewed the incident involving Mr. Boyd also failed to observe a police officer remove the chain and padlock prior to the fatal shot. The Special Prosecutor concluded that Cst. Chipperfield's evidence that he failed to note Mr. Boyd being disarmed may reflect the fact that sometimes people do not see what is there to be seen.

On the whole, the Special Prosecutor has concluded that the evidence made available to him for the purpose of charge assessment through VPD, ASIRT and the transcripts of the coroner's inquest is not sufficient to prove beyond a reasonable doubt that the shooting of Mr. Boyd constitutes an offence involving culpable homicide within the meaning of the *Criminal Code*. In light of that determination, a criminal charge has not been approved.